



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2018

Ms. Diana Shearer  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2018-03796

Dear Ms. Shearer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 696593 (File No. OP-17-444).

The El Paso County Medical Examiner's Office (the "medical examiner's office") received a request for scene photographs for a specified incident.<sup>1</sup> You indicate the medical examiner's office has released some of the requested information with redactions made pursuant to section 552.136(c) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>You state the medical examiner's office sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.136(b). Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which provides in pertinent part, the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information in Exhibit C constitutes medical records. As such, the medical examiner’s office must withhold Exhibit C under section 552.101 in conjunction with the MPA.

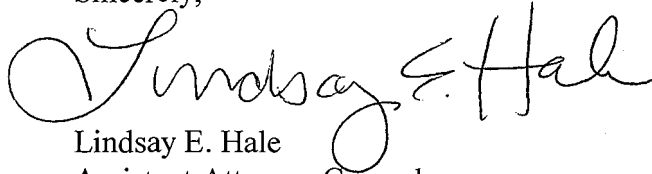
Exhibit D consists of photographs of a certificate of death, which you claim are protected under section 552.115 of the Government Code. Section 552.115(a) provides that “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official. The medical examiner’s office is not the Bureau of Vital Statistics or a local registration official; therefore, the medical examiner’s office may not withhold Exhibit D under section 552.115. *See* Open Records Decision No. 338 (1982).

In summary, the medical examiner’s office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with the MPA. The medical examiner’s office must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tdw

Ref: ID# 696593

Enc. Submitted documents

c: Requestor  
(w/o enclosures)